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United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

BEN T. B.CAI,)	Case No. C 06-6750 CW
)	
Plaintiff,)	STIPULATION OF SETTLEMENT;
)	ORDER
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

IT IS HEREBY STIPULATED by and between plaintiff Ben T.B. Cai and defendant United States of America, as follows:

1. The parties do hereby agree to settle and compromise the above-entitled personal injury action under the terms and conditions set forth herein.

2. The United States of America, defendant, agrees to pay to the plaintiff the sum of nine thousand five hundred thirty-four dollars and eighty-two cents (\$9,534.82), which sum shall be in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof, resulting, and to result, from the same subject matter that gave rise to the above-captioned lawsuit, for which plaintiff or her heirs, executors, administrators, or assigns, and each

1 of them, now have or may hereafter acquire against the United States of America or its agents,
2 servants, and employees.

3 3. Plaintiff and her heirs, executors, administrators or assigns hereby agree to accept the
4 sum of nine thousand five hundred thirty-four dollars and eighty-two cents (\$9,534.82) in full
5 settlement and satisfaction of any and all claims, demands, rights, and causes of action of
6 whatsoever kind and nature, arising from, and by reason of any and all known and unknown,
7 foreseen and unforeseen bodily and personal injuries, damage to property and the consequences
8 thereof which they may have or hereafter acquire against the United States of America or its
9 agents, servants and employees on account of the same subject matter that gave rise to the
10 above-captioned lawsuit. Plaintiff and her heirs, executors, administrators or assigns further
11 agree to reimburse, indemnify and hold harmless the United States of America and its agents,
12 servants or employees from any and all such causes of action, claims, liens, rights, or subrogated
13 or contribution interests incident to or resulting from further litigation or the prosecution of
14 claims by plaintiff or her heirs, executors, administrators or assigns against any third party or
15 against the United States of America.

16 4. This stipulation for compromise settlement is entered into by all parties for the
17 purpose of compromising disputed claims and avoiding the expenses and risks of litigation. This
18 settlement does not constitute an admission of liability or fault on the part of the defendant.

19 5. This agreement may be pled as a full and complete defense to any subsequent action
20 or other proceeding which arises out of the claims released and discharged by the agreement.

21 6. It is also agreed, by and among the parties, that the settlement amount of nine
22 thousand five hundred thirty-four dollars and eighty-two cents (\$9,534.82) paid by the United
23 States of America to plaintiff represents the entire amount of the compromise settlement and that
24 the respective parties will each bear their own costs, fees, and expenses and that any attorneys'
25 fees owed by the plaintiff will be paid out of the settlement amount and not in addition thereto.

26 7. It is also understood by and among the parties that, pursuant to Title 28, United States
27 Code, Section 2678, attorneys' fees for services rendered to plaintiff in connection with this
28 action shall not exceed 25 per centum of the amount of the compromise settlement.

1 8. Payment of the settlement amount will be made by a check payable to "Ben T. B. Cai
2 and Law Offices of Dennis M. Carr, his attorneys."

3 9. Plaintiff is advised that settlement checks are often not available for eight to ten weeks
4 after approval of the settlement by the court. Counsel for the United States of America will
5 notify plaintiff's counsel when the settlement check is available. Within ten (10) days of such
6 notification, plaintiff agrees that he will cause her attorneys to execute and provide to defense
7 counsel, a stipulation of dismissal with prejudice of plaintiff's complaint. Within ten (10) days
8 of receipt of the plaintiff's stipulation of dismissal, the United States of America will deliver the
9 above-referenced settlement check to plaintiff's counsel.

10 10. Plaintiff hereby releases and forever discharges the United States Postal Service, the
11 United States of America and any and all of their past and present officials, employees, agents,
12 attorneys, their successors and assigns, from any and all obligations, damages, liabilities, actions,
13 causes of actions, claims and demands of any kind and nature whatsoever, whether suspected or
14 unsuspected, at law or in equity, known or unknown, arising out of the allegations set forth in
15 plaintiff's pleadings in this action.

16 11. The provisions of California Civil Code Section 1542 are set forth below:

17 "A general release does not extend to claims which the creditor does not know or
18 suspect to exist in his favor at the time of executing the release, which if known
19 by him must have materially affected his settlement with the debtor."

20 Plaintiff, having been apprised of the statutory language of Civil Code Section 1542 by his
21 attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and
22 all rights he may have pursuant to the provision of that statute and any similar provision of
23 federal law. Plaintiff understands that, if the facts concerning injuries or liability for damages
24 pertaining thereto are found hereinafter to be other than or different from the facts now believed
25 by her to be true, the Agreement shall be and remain effective notwithstanding such material
26 difference.

27 12. The parties agree that this stipulation is intended to be a full and final settlement of
28 all claims arising out of the allegations set forth in plaintiff's pleadings in this action. Plaintiff

1 agrees to indemnify and hold harmless defendant United States of America from any and all
2 claims, demands, obligations, liens, and lawsuits brought against the United States of America,
3 its agencies or employees, including but not limited to the United States Postal Service, arising
4 out of the allegations set forth in plaintiff's complaint in this action.

5 13. This instrument shall constitute the entire agreement between the parties, and it is
6 expressly understood and agreed that the agreement has been freely and voluntarily entered into
7 by the parties hereto with the advice of counsel, who have explained the legal effect of this
8 agreement. The parties further acknowledge that no warranties or representations have been
9 made on any subject other than as set forth in this Agreement. This Agreement may not be
10 altered, modified or otherwise changed in any respect except by writing, duly executed by all of
11 the parties or their authorized representatives.

12 14. The parties agree that, should any dispute arise with respect to the implementation of
13 the terms of this Agreement, Plaintiff shall not seek to rescind the Agreement and pursue her
14 original causes of action. Plaintiff's sole remedy in such a dispute is an action to enforce the
15 Agreement in district court. The parties agree that the district court will retain jurisdiction over
16 this matter for the purposes of resolving any dispute alleging a breach of this Agreement.

17 15. This settlement agreement may be signed in counterparts.

18 December 15, 2006
19 Dated: ~~November 27~~, 2006

KEVIN V. RYAN
United States Attorney

20
21 /s/
Joann M. Swanson
22 Assistant United States Attorney
Attorneys for United States of America
23

24 //

25 //

1 Dated: ~~November~~, 2006
2 December 12

LAW OFFICE OF DENNIS M. CARR

3 _____/s/
4 Dennis M. Carr
Attorney for Plaintiff


5 December 9
6 Dated: ~~November~~, 2006

7 _____/s/ 12/09/06
Ben T. B. Cai
Plaintiff

8 **ORDER**

9 Pursuant to the parties' stipulation of settlement, IT IS SO ORDERED.
10

11 Dated: 12/22/06
12 _____


13 CLAUDIA WILKEN
United States District Judge